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23 a corporation organized and existing under the laws
24 of the Republic of Germany

25 UNITED STATES DISTRICT COURT

26 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

27 EDAG Engineering GmbH,
28 Petitioner,
v.
BYTON North America Corporation,
Respondent.

Case No. 3:21-cv-04736-EMC
**EDAG ENGINEERING GMBH'S
OPPOSITION TO RESPONDENT
BYTON NORTH AMERICA
CORPORATION'S *EX PARTE*
APPLICATION TO STRIKE THE
FILING OF PETITION EDAG
ENGINEERING GMBH'S MOTION TO
COMPEL**

Date: June 30, 2022
Time: 1:30 pm.
Judge: Honorable Edward M. Chen [Video-ZOOM hearing)

Petition Filed: June 23, 2021

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1 **I. BYTON NORTH AMERICA CORPORATION ("BNA") OBSTRUCTED ANY
2 DISCOVERY DUE FROM BNA**

3 **Why BNA is obstructing discovery as follows:**

4 "2. Even if the deposition subpoena had been properly directed to Mr. Kamaeswaran on
5 behalf of Byton NA and/or Byton Limited, the document requests contained in the
6 subpoena are overbroad, harassing, oppressive, vague, ambiguous, seek materials that
7 are neither relevant to the subject matter of the action nor reasonably calculated to lead
8 to the discovery of admissible evidence, potentially seek production of materials
9 protected by the attorney-client privilege, and are invasive of privacy rights protected by
10 the California Constitution. (Doc. # 90-2, PAGE 27, lines 10-26; and . Doc. # 90-2, Exhibit "D"
11 and "D")

12 These are the description of records that EDAG seeks BNA to produce:

13 "4 Any and all financial statements, whether audited or unaudited, ledgers, journals,
14 internal financial statements, credit reports, credit applications, outside or inside financial
15 statements, representation of the financial conditions of BNA, any financial records generated from
16 a third party of BNA, notes, narrative, chronicles, or histories of BNA account commencing on
17 January 1, 2018 to date hereof.

18 12. The file, application, granting, all supporting papers, financial statements, ledgers,
19 journal, emails, text messages, checks, copies of checks, wire transfer, forgive agreements,
20 approvals, lists of employees, employment records, projections, all records for the forgiveness, all
21 records which evidence the deposit of the \$10,000,000 (Collectively "PPP") in any account or any
22 type or any other amount in any bank account owned or under the control of BNA or any agent
23 thereof, the records for the transfer, wire transfer, ACH, or any other records of any type for the
24 loans, grants, of Paycheck Protection Programs of the SBA, loan number 1746277202, loan amount
25 of \$10,000,000, 397 employees, approved April 18, 2021, SBA 912, forgiveness date of June 11,
26 2021, forgiveness of \$10,113,055.56 This includes all bank statements, records of any wire
27 transfers, ACH, or any other transfer to and the benefit of BNA or the transfer to anyone else, or the
28 transfer of the PPP funds to any person.

29 13. Any and all accounting entries, financial statements, journals, ledgers, audited or
30 unaudited financial statements, agreements, contracts, emails, text message, letter agreement or any
31 other communications or writings to discuss, justify, explain, add to, or make statement of, for the
32 transfer of any patents of the (a) BNA patents for the years of 2019 to 2021 to BNA Limited (i.e.,
33 BNA, LTD) and (b) transfer of the intellectual property, charts, grafts, designed, technical data,
34 formulas, scientific information originating from EDAG Engineering GmbH (collectively EDAG-
35 IP) which BNA or any entity related to BNA or any entitled associated to BNA in filing an
36 application for a patents, and success in the granting a patent by the USPTO which the patents
37 incorporated EDAG- IP.

38 15. Any and all deposits of any type and from any person, including revenue, sales
39 proceeding, loan proceeds from anyone, proceeds from the sale of any assets, funds from a third
40 party for purpose of capital from hedge funds, and venture capitalists, revenue from other related
41 entities, such as BYTON Limited, deposits from any employees, officers, shareholder, directors

1 or any family members, refunds from any person, including the landlord, PG&E, refunds from
 2 any vendor, refuses from any insurance companies, the IRS or tax authorities or any other person
 3 or anyone on its behalf commencing on January 1, 2018 to date hereof for the accounts of BNA.
 BNA refused to turn over the business and financial records of BNA and likewise BY-LTD
 4 sought by the subpoena (Doc. # 90-2, Par. 4, page 5, Par. 13, Page 6 and Page 15, page 7) for
 those precisely records.”

5 The answer is that BNA admitted that BNA cannot (and will not) produce any records,
 6 which was explained to BNA as follows:

7 **From:** David Cook [mailto:cook@cookcollect.com]
Sent: Thursday, January 20, 2022 11:12 AM
To: 'Keith A. Sipprelle'; 'David Cook'; 'David Cook'; 'Cook@SqueezeBloodFromTurnip.com'
Cc: 'Evangeline A.Z. Burbidge'
Subject: RE: EDAG adv. Byton North America Corporation

10 Mr. Sipprelle:

11 1. We decline your offer and are proceeding with our motion to compel the production
 12 of documents.

13 2. We decline to turn over the BNA banking records. These are the banking records of
 14 BNA, your client. Banking records are all electronic and BNA has an electronic copy of its banking
 records. If not, please inform me why.

15 If you are telling me that you, as the attorney of record for BNA, do not have access to the
 16 BNA banking records, or that BNA destroyed the records, or failed and refused to pay a third party
 to warehouse and maintain the banking records, the consequence is BNA lacks any records at all.^[1]

17 The repercussions of BNA destroying (or engaging in spoilage) the banking records, are that
 18 the statements in your Opposition to the Motion to Amend, and same statement in Mr. Ying's
 Declaration are inescapably false.

19 3. We are confirming your comments in the hearing before Magistrate Judge Hixson
 20 and the comments in your recent email that you do not have access to, possession of, "**corporate**
21 documents" and "**records**" (Doc.# 85-1, 2/30, page 1, par. 1, lines 9-10), and "As set forth in the
 22 Ying Declaration, Byton NA and Byton Limited are separate and distinct legal entities that, inter
 alia, maintained **separate financial books and records**, and did not intermingle funds." (Doc.# 85,
 23 page 12/16, page 9 lines 9-11) and "Byton NA and Byton Limited are independent legal entities, and
 24 each company has maintained separate **financial books and records**. As separate and distinct
 corporate entities," (Doc. #85, page 6/16, page lines 8-10).

25 However both Mr. Ying and yourself in endorsing Mr. Ying have represented to the court in
 26 your Opposition and Ying Declaration (Doc. # 85 and 85-1) to the Motion to Amend that Mr. Ying's
 27 "[my] review of **corporate documents and records**" and you personally endorsed "**separate**

28 ^[1] This is what you said on January 19, 2022:

29 "Dear Mr. Cook: I received a call a short time ago from JPMorgan Chase regarding its impending
 30 production of records responsive to your subpoena. I advised the JPMorgan Chase employee that Byton NA
 31 would not be filing a motion to quash your subpoena, and that the records should be produced. I understand
 32 that the records will be produced to you electronically. **Kindly provide me with an electronic copy of any**
33 records you receive responsive to the subpoena (as well as to any other outstanding or future subpoenas)."

1 **financial books and records,"** In making these statements, the predicate is that Mr. Ying and
 2 yourself would personally have in your hand the "[my] review of corporate documents and
 3 records" and "separate financial books and records."

4 **Based on the sworn statements of Mr. Ying and your endorsement of Mr. Ying, please
 5 send to us all records of BNA by 2 p.m. today, January 20, 2022. You must have had all of
 6 them in your possession to ensure that Mr. Ying's statements are based on evidence and
 7 truthful before a Federal Judge.**

8 4. The attachment to this email is the list of wire transfers from BNA to the Byton
 9 entities including FMC Cayman which amounts to about \$160,000,000.000. The dates of these
 10 transfers match in part with non-payment of trade bills, including EDAG. Given the substantial
 11 sums of money, and moreover that these are all insider transactions and directly contradict Mr.
 12 Ying's statements, please send to me all of the records of any type that justify these transactions.
 13 Given that Mr. Ying stated of his "[my] review of corporate documents and records," Mr.
 14 Ying has the records in hand. Please send me the records over by 2 p.m. From my own extensive
 15 experience, all BNA's corporate, business, banking, and financial are online.

16 This is our interim demand in light of the pending records dump from HSBC BANK (USA) for the
 17 PPP and related documents.

18 [1] This is what you said on January 19, 2022:

19 "Dear Mr. Cook: I received a call a short time ago from JPMorgan Chase regarding
 20 its impending production of records responsive to your subpoena. I advised the JPMorgan
 21 Chase employee that Byton NA would not be filing a motion to quash your subpoena, and
 22 that the records should be produced. I understand that the records will be produced to you
 23 electronically. **Kindly provide me with an electronic copy of any records you receive
 24 responsive to the subpoena (as well as to any other outstanding or future subpoenas).**"

25 We remind you of what you told to Judge Hixon:

26 5. **MR. SIPPRELLE:** Your Honor, if I could just
 27 6 interject on the records. And again, I'm in a little bit of a
 28 7 quandary here because there's nobody at the company who can --
 8 I can really communicate regarding the records. Again, and I
 9 have no desire to withhold anything from Mr. Cook, but I'm not
 10 sure where the records are or how I access them, and there's
 11 nobody who -- right now who can really tell me. And if Mr.
 12 Cook wants the records before the deposition, then I think we
 13 need to keep that in mind in scheduling Mr. Kameswaran's
 14 deposition. I mean, I will try to get records to Mr. Cook,
 15 but I need to figure out where they are and how I access them
 16 and so forth. So that's another kind of a related problem I
 17 have.

18 18 **THE COURT:** Okay. I understand. It sounds like
 19 these are issues that you're going to want to talk about in
 20 your response to the motion to compel, which is before Judge
 21 Chen and has not been referred to me, or has not yet been
 22 referred to me. It is currently before him.

1 (Doc. # 106, Transcript, Before Magistrate Judge Thomas S. Hixon, presiding, January 14, 2022,
2 page 9, lines 5-22)."

3 David J. Cook, Esq., Cook Collection Attorneys PLC. 165 Fell Street, San Francisco, CA 94102.

4 By obstructing the production of records in the objections, and stating in the above emails,
5 and to Judge Hixon, BNA (and its attorney) are unable or unwilling to produce any records
6 supporting the Ying Declaration and supporting memorandum of ""[my] review of corporate
7 documents and records" and "separate financial books and records." Absent the "records," which
8 BNA will never produce, no matter what, the Opposition to the Motion to Add (Doc. # 71 and
9 #72), and therefore EDAG requests that the court will strike both the Opposition and the Declaration
10 **BNA ABANDONED AND REPUDIATED ANY EFFORT TO MEET AND CONFER**
(Doc. 85 and #85-1).
WHEN BNA LACKED ANY INTENTION TO COMPLY THEREWITH

11 EDAG repeatedly attempted to meet and confer and BNA (and its attorney) while BNA
12 refused to "meet and confer." The purpose of the refusal to meet and confer was to waste
13 everyone's time, and moreover to force EDAG into extensive and unnecessary proceedings when
14 BNA admits that BNA will not (or could not) produce any records.

15 **This is the train of events.**

16 EDAG sought to meet and confer with the following attempt:

17 1. January 5, 2022 **emails:**

18 From: David J. Cook [mailto:davidcook@cookcollectionattorneys.com]

19 Sent: Wednesday, January 05, 2022 9:22 AM

20 To: 'Keith A. Sipprelle'; 'eburbidge@lewisllewellyn.com'; 'mlewis@lewisllewellyn.com';

21 'kwalczak@lewisllewellyn.com'; 'bestes@lewisllewellyn.com'

22 Cc: 'Cook@cookcollect.com'; 'David Cook'

23 Subject: RE: EDAG v. Byton- Byton's Objections

24 =====
25 =====
26 =====
27 =====

28 Mr. Sipprelle:

We reject your objections, dated Jan. 4, 2022, to the subpoenas which we have served.

1 We are obligated to meaningful "meet and confer."

2 We are offering to meet and confer as follows:

3 1, You provide us with three dates commencing on January 7, 2022 to January 11,
4 2022.

5 2. Each session will not exceed 90 minutes.

6 3. The meeting is by ZOOM.

7 4. We will provide a court reporter. To avoid any objection to a court reporter, we will
8 pay for your copy of the transcript save the court's ruling on any motion that we will file.

9 5. Absent some resolution of the objections or you withdraw the objections after the
Zoom "meet and confer," we will file a motion to strike the objections that you have asserted, and
seek monetary sanctions borne by you, your firm and Byton North America Corporation ("BNA"),
and likewise request the court award us the fees and charges of the Zoom, the costs of the court
reporters and charges for all copies of the Zoom "meet and confer."

10 6. Likewise should you decline to participate in the Zoom "meet and confer," we will
11 provide you with a written response in which we will explain that your objections are without any
merit and provide you with 7 days to provide responses compliant with the subpoenas. Likewise we
12 will file a motion to strike the objections that you have asserted, and seek monetary sanctions borne
by you, your firm and BNA.

13 I am representing the client on a contingent basis, but the hourly rates for this case are
\$1,250.00 which is the hourly rates of senior partners of large law firms. I am the author of *Post-*
Judgment Remedies in Reaching Patents, Copyrights and Trademarks in the Enforcement of A
Money Judgment, 9 NW. J. TECH. & INTELL. PROP. 128 (2010).

14 <https://scholarlycommons.law.northwestern.edu/njtip/vol9/iss3/3> with 17,637 readers, three (3)
published ABA books and multiple law journal and law review articles which likewise have been
cited in courts and other periodicals.

17 Please advise by 3:00 p.m. today.

18 David J. Cook, Esq., Cook Collection Attorneys PLC., 165 Fell Street, San Francisco, CA 94102
19 (415) 989 4730

20 2. **January 5, 2022**

21 On Jan 5, 2022, at 9:49 PM, David Cook <cook@cookcollect.com> wrote:

22 Mr. Sipprelle:

24 We have not heard from you. Your silence is your repudiation of your obligation to "meet and
confer" with us. You have likewise rejected our options.

25 First, we inform you that BNA cannot object to service upon a third party of a subpoena as follows:

27 **"B. Defendants' Objections are Procedurally Improper.**

28 *2 In the first instance, Rule 45 does not permit a party to interfere with a subpoena by serving or
filing objections Moon v. SCP Pool Corp., 232 F.R.D. 633, 636 (C.D. Cal. 2005) ("A party cannot

1 object to a subpoena duces tecum served on a non-party, but rather, must seek a protective order or
 2 make a motion to quash.”) (citing Schwarzer, Tashima & Wagstaffe, California Practice Guide:
 3 Federal Civil Procedure Before Trial, ¶ 11:2291 (2005 rev.)). However, even if this Court were to
 4 construe Defendants’ motion as a Motion to Quash, see *Odyssey Reinsurance Co. v. Nagby*, Case
 5 No. 16-CV-3038-BTM(WVG), 2018 WL 1963665, at *2 (S.D. Cal. Apr. 26, 2018) (considering
 6 possibility of construing defendant’s objections as motion to quash), Defendants have not submitted
 7 any evidence that this Court has jurisdiction to rule on such a motion. Defendants did not submit the
 8 subpoenas or anything else to indicate in which district compliance was required.” *Wright v. Old*
 9 *Gringo, Inc.*, No. 17CV1996-BAS (MSB), 2020 WL 443823, at *1–2 (S.D. Cal. Jan. 28, 2020)

10 “ A party cannot object to a subpoena duces tecum served on a nonparty, but rather,
 11 must seek a protective order or make a motion to quash. Schwarzer, Tashima & Wagstaffe,
 12 *California Practice Guide: Federal Civil Procedure Before Trial*, ¶ 11:2291 (2005 rev.) (emphasis
 13 in original); *see also Pennwalt Corp. v. Durand-Wayland, Inc.*, 708 F.2d 492, 494 n. 5 (9th
 14 Cir.1983) (“Once the person subpoenaed objects to the subpoena . . . the provisions of Rule 45[c]
 15 come into play.”).” *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005)

16 Therefore, the objections which you have served upon HSBC Bank, Silicon Valley Bank and
 17 JPMorgan Chase Bank are void and interfere with the post judgment discovery which is far more
 18 expansive than discovery in a civil case.

19 Second, BNA is obligated to comply with the service of the subpoena, and the objections *per se* are
 20 without any merit at all:

21 In *Hooser v. The Superior Court of San Diego County*, 84 Cal.App.4th 997, 1002, 101
 22 Cal.Rptr.2d 341 (Cal.App.4 Dist. 2000), the court stated as follows:

23 “1. General Principles

24 Detailed statutory provisions govern the manner and extent to which civil judgments
 25 may be enforced. (*Imperial Bank v. Pim Electric, Inc.* (1995) 33 Cal.App.4th 540,
 26 546 [39 Cal.Rptr.2d 432].) One statutory procedure designed to aid a judgment
 27 creditor in his enforcement efforts is a judgment debtor examination. (Code Civ.
 28 Proc., §§ 708.110-708.205.) Pursuant to the statutory procedure, the judgment
 1 creditor may obtain an order requiring the judgment debtor to appear before the court,
 2 or a court-appointed referee, to furnish information that will aid in the enforcement of
 3 the money judgment. (Code Civ. Proc., § 708.110, subd. (a).) At the examination, the
 4 judgment creditor has the opportunity to inquire of the judgment debtor regarding
 5 property the debtor has, or may acquire in the future, that may be available to satisfy
 6 the judgment. (*Ibid.* ; Recommendation Relating to Enforcement of Judgment Law
 7 (Sept. 1982) 16 Cal. Law Revision Com. Rep. (1982) p. 1124.) A judgment debtor
 8 examination is intended to allow the judgment creditor a wide scope of inquiry
 9 concerning property and business affairs of the judgment debtor. (*Young v. Keele*
 10 (1987) 188 Cal.App.3d 1090, 1093 [233 Cal.Rptr. 850]; *see also Troy v. Superior*
 11 *Court* (1986) 186 Cal.App.3d 1006, 1014 [231 Cal.Rptr. 108] [the purpose of the
 12 examination is “to leave no stone unturned in the search for assets which might
 13 be used to satisfy the judgment.”].)” (Emphasis added) (“*Hoosier*”)

1 Arising from a dispute over an ORAP, *Hoosier* explains that a creditor, such as EDAG, has
 2 the right to all documents as described in the efforts to collect the judgment. The scope of discovery
 3 from the debtor is very expansive, particularly when the \$10,000,000 has disappeared, 23 EV
 4 Vehicles have been shipped to PRC or Hong Kong, that 22 patents have been assigned to BY-LTD,
 5 that BNA has fled its location in Santa Clara, and agents for service of process have resigned and that
 6 BY-LTD and BNA claimed a the 2016 Research Agreement which is a fraudulent conveyance or a
 7 fabrication, and both.

8 Since I haven not heard from you on any of these issues, when otherwise you could have
 9 picked up the phone and explained your position, you have not called me or communicated with me,
 10 and therefore, we will file a motion to strike these objections, recall all of the objections which you
 11 have apparently served on the three banks, seek to compel BNA to hand over the records and file on
 12 **January 10, 2022** or shortly thereafter and seek monetary sanctions.

13 David J. Cook, Esq. Cook Collection Attorneys PLC., 165 Fell Street, San Francisco, CA 94102
 14 (415) 989 4730

15 **3. January 6, 2022**

16 **From:** Keith A. Sipprelle [mailto:ksipprelle@vstriallaw.com]

17 **Sent:** Thursday, January 06, 2022 12:14 PM

18 **To:** David Cook

19 **Cc:** David J. Cook; eburbidge@lewisllewellyn.com; mlewis@lewisllewellyn.com;
 20 kwalczak@lewisllewellyn.com; bestes@lewisllewellyn.com; David Cook

21 **Subject:** Re: EDAG v. Byton- Objections

22 Mr. Cook: I am on a ship in the middle of the Caribbean Sea with spotty Internet and cell phone
 23 service.

24 I reject your absurd assertion that I have repudiated my obligation to meet and confer with you.

25 I will respond to the substance of your email next week, after I return to the United States.

26 Sent from my iPhone

27 **4. January 10, 2022, 9:03 a.m.**

28 **From:** David J. Cook [mailto:davidcook@cookcollectionattorneys.com]

29 **Sent:** Monday, January 10, 2022 9:03 AM

30 **To:** 'Keith A. Sipprelle'; 'David Cook'

31 **Cc:** 'eburbidge@lewisllewellyn.com'; 'mlewis@lewisllewellyn.com';
 32 'kwalczak@lewisllewellyn.com'; 'bestes@lewisllewellyn.com'; 'David Cook'

33 **Subject:** RE: EDAG v. Byton- Objections

34 Mr. Sipprelle:

35 Please provide me with dates and times to "meet and confer" between today and Tuesday by 3:00
 36 p.m. on the issue of the Objections for the pending subpoenas.

37 David J. Cook, Esq. Cook Collection Attorneys, PLC., 165 Fell Street, San Francisco,
 38 CA 94102 (415) 989-4730

1 **5. January 10, 2022, 12:37 p m**

2 **From:** David J. Cook [mailto:davidcook@cookcollectionattorneys.com]
3 **Sent:** Monday, January 10, 2022 12:37 PM
4 **To:** 'Keith A. Sipprelle'; 'David Cook'
5 **Cc:** 'eburbidge@lewisllewellyn.com'; 'mlewis@lewisllewellyn.com';
6 'kwalczak@lewisllewellyn.com'; 'bestes@lewisllewellyn.com'; 'David Cook'
7 Subject: RE: EDAG v. Byton- Objections

8 What about Jama Software Inc.?

9 If not please provide a date and time for meet and confer.

10 **6. January 10, 2022, 3:51 p.m.**

11 **From:** David J. Cook [mailto:davidcook@cookcollectionattorneys.com]
12 **Sent:** Monday, January 10, 2022 3:51 PM
13 **To:** 'Keith A. Sipprelle'; 'David Cook'
14 **Cc:** 'eburbidge@lewisllewellyn.com'; 'mlewis@lewisllewellyn.com';
15 'kwalczak@lewisllewellyn.com'; 'bestes@lewisllewellyn.com'; 'David Cook'
16 Subject: RE: EDAG v. Byton- Objections

17 BNA was served with the subpoena and you have responded.

18 I am available all day to "meet and confirm" on January 11, 2022 for documents to be produced by
19 BNA.

20 David J. Cook

21 **7. January 10, 4:35 p.m.**

22 **From:** David J. Cook [mailto:davidcook@cookcollectionattorneys.com]
23 **Sent:** Monday, January 10, 2022 4:35 PM
24 **To:** 'Keith A. Sipprelle'; 'David Cook'
25 **Cc:** 'eburbidge@lewisllewellyn.com'; 'mlewis@lewisllewellyn.com';
26 'kwalczak@lewisllewellyn.com'; 'bestes@lewisllewellyn.com'; 'David Cook'
27 Subject: RE: EDAG v. Byton- Objections

28 we served the Secretary of State

29 **From:** Keith A. Sipprelle [mailto:ksipprelle@vtriallaw.com]
30 **Sent:** Monday, January 10, 2022 4:23 PM
31 **To:** davidcook@cookcollectionattorneys.com; 'David Cook'
32 **Cc:** eburbidge@lewisllewellyn.com; mlewis@lewisllewellyn.com; kwalczak@lewisllewellyn.com;
33 bestes@lewisllewellyn.com; 'David Cook'
34 **Subject:** RE: EDAG v. Byton- Objections

1 Dear Mr. Cook: I don't follow the logic of your email. Subpoenas must be personally served. Byton
2 NA has not been personally served with the subpoenas. The subpoenas were delivered to Mr.
3 Kameswaran. Mr. Kameswaran is not a Byton NA employee. Hence, service on Mr. Kameswaran is
4 not service on Byton NA. I objected to the subpoenas delivered to Mr. Kameswaran because they
5 are a legal nullity. As you are aware, service on Byton NA must be made through the California
6 Secretary of State. Moreover, for the avoidance of any doubt going forward, my firm is not
7 authorized to accept service of subpoenas or any other discovery documents on behalf of Byton NA.

8 Regards,

9 Keith A. Sipprelle
10 Partner

11 **VAN ETTEN SIPPRELLE**

12 **TRIAL LAWYERS**

13 2945 Townsgate Road, Suite 200
14 Westlake Village, CA 91361

15 805.719.4904 Direct
16 805.719.4900 Main

17 805.719.4950 Fax
18 ksipprelle@vstriallaw.com
19 www.vstriallaw.com

20 **8. January 10, 202, 6:51 pm.**

21 **From:** David J. Cook [mailto:davidcook@cookcollectionattorneys.com]
22 **Sent:** Monday, January 10, 2022 6:51 PM
23 **To:** 'Keith A. Sipprelle'; 'David Cook'
24 **Cc:** 'eburbidge@lewislewellyn.com'; 'mlewis@lewislewellyn.com';
25 'kwalczak@lewislewellyn.com'; 'bestes@lewislewellyn.com'; 'David Cook'
26 **Subject:** RE: EDAG v. Byton- Objections

27 We served the Secretary of State and mailed a copy to BNA at its last known address. I send
28 you a copy of the POS.

29 **From:** Keith A. Sipprelle [mailto:ksipprelle@vstriallaw.com]
30 **Sent:** Monday, January 10, 2022 6:37 PM
31 **To:** davidcook@cookcollectionattorneys.com; 'David Cook'
32 **Cc:** eburbidge@lewislewellyn.com; mlewis@lewislewellyn.com; kwalczak@lewislewellyn.com;
33 bestes@lewislewellyn.com; 'David Cook'
34 **Subject:** RE: EDAG v. Byton- Objections

35 Well, that's news to me. I have seen nothing indicating that service on the Secretary of State in
36 compliance with the requirements of Corporations Code Section 1702 has occurred. In any event,
37 even if such service has occurred, this would not remedy the defective nature of subpoenas directed
38 to Mr. Kameswaran as the purported custodian of Byton NA and Byton Limited.

1 Regards,

2 Keith A. Sippelle
3 Partner

4 **VAN ETTEN SIPPRELLE**

5 TRIAL LAWYERS

6 2945 Townsgate Road, Suite 200
7 Westlake Village, CA 91361

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12 www.vstriallaw.com

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16 party any tax-related matters.

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22 original sender or Van Etten Sippelle LLP at Tel: 805-719-4900, immediately by telephone or by
23 return e-mail and delete this message, along with any attachments, from your computer. Thank you.

24 **From:** David J. Cook [<mailto:davidcook@cookcollectionattorneys.com>]

25 **Sent:** Monday, January 10, 2022 4:35 PM

26 **To:** Keith A. Sippelle <ksippelle@vstriallaw.com>; 'David Cook' <cook@cookcollect.com>

27 **Cc:** eburbidge@lewislewellyn.com; mlewis@lewislewellyn.com; kwalczak@lewislewellyn.com;

28 bestes@lewislewellyn.com; 'David Cook' <cook@cookcollectionattorneys.com>

29 **Subject:** RE: EDAG v. Byton- Objections

30 we served the Secretary of State

31 **From:** Keith A. Sippelle [<mailto:ksippelle@vstriallaw.com>]

32 **Sent:** Monday, January 10, 2022 4:23 PM

33 **To:** davidcook@cookcollectionattorneys.com; 'David Cook'

34 **Cc:** eburbidge@lewislewellyn.com; mlewis@lewislewellyn.com; kwalczak@lewislewellyn.com;

35 bestes@lewislewellyn.com; 'David Cook'

36 **Subject:** RE: EDAG v. Byton- Objections

1 Dear Mr. Cook: I don't follow the logic of your email. Subpoenas must be personally served. Byton
 2 NA has not been personally served with the subpoenas. The subpoenas were delivered to Mr.
 3 Kameswaran. Mr. Kameswaran is not a Byton NA employee. Hence, service on Mr. Kameswaran is
 4 not service on Byton NA. I objected to the subpoenas delivered to Mr. Kameswaran because they
 5 are a legal nullity. As you are aware, service on Byton NA must be made through the California
 6 Secretary of State. Moreover, for the avoidance of any doubt going forward, my firm is not
 7 authorized to accept service of subpoenas or any other discovery documents on behalf of Byton NA.

8 Regards,

9

10 **III. THE BOILERPLATE OBJECTIONS ARE NOT OBJECTIONS AND THEREFORE,
 11 BNA DEFAULTED AND HAS NO DEFENSE TO THE MOTION TO PRODUCE**

12 The cases are uniform in that boilerplate objections, whether in the form of general
 13 objections as here, are not valid objections, and in fact are deemed as no objection at all as follows:

14 "Given this ample authority, the court overrules all of Plaintiffs' boilerplate objections, as
 15 that term is used in this decision. Plaintiffs mere use of the title "General Objections" should have
 16 clearly signaled a violation of the specificity requirements in Rules 33 and 34. General objections
 17 neither explain nor preserve anything. They are empty, useless traditions that do nothing but make
 18 discovery unnecessarily cumbersome. Similarly, Plaintiffs' explanation-less "undue burden"
 19 objections and all of Plaintiffs' "to the extent that" objections fail the specificity requirements
 20 because they conceal from opposing counsel and the court the actual problem with each request.
 21 Finally, Plaintiffs fail to explain what misconduct of Defendant is precluding them from producing
 22 the requested discovery. This lack of specificity dooms these objections. Therefore, all these
 23 objections are OVERRULED in every discovery response in which they appear. The tradition is
 24 over." *Smash Tech., LLC v. Smash Sols., LLC*, 335 F.R.D. 438, 447–48 (D. Utah 2020) and the court
 25 continues:

26 "An objection to a discovery request is boilerplate when it merely states the legal grounds for
 27 the objection without (1) specifying how the discovery request is deficient and (2) specifying how
 28 the objecting party would be harmed if it were forced to respond to the request. For example, a
 1 boilerplate objection might state that a discovery request is "irrelevant" or "overly broad" without
 2 taking the next step to explain why. These objections are taglines, completely "devoid of any
 3 individualized factual analysis." Often times they are used repetitively in response to multiple
 4 discovery requests. Their repeated use as a method of effecting highly uncooperative, scorched-earth
 5 discovery battles has earned them the nicknames "shotgun"—and "Rambo"—style objections. The
 6 nicknames are indicative of the federal courts' extreme disfavor of these objections. and:

7 In other words, "merely assert[ing] boilerplate objections that the discovery sought is vague,
 8 ambiguous, overbroad, unduly burdensome, etc.... without specifying how each [interrogatory or]
 9 request for production is deficient and without articulating the particular harm that would accrue if
 10 [the responding party] were required to respond to [the] discovery requests" simply is not enough."
 11 *Smash Tech., LLC v. Smash Sols., LLC*, 335 F.R.D. 438, 441 (D. Utah 2020)

12 "General or boilerplate objections are invalid; objections to discovery must be made with
 13 specificity, and the responding party has the obligation to explain and support its objections.
 14 [Citations omitted] In re Terrell, 569 B.R. 881, 887–88 (Bankr. W.D. Okla. 2017), and other
 15 cases follows: General objections are " 'tantamount to not making any objection at all.' " *Bankdirect
 16 Cap. Fin., LLC v. Cap. Premium Fin., Inc.*, No. 15 C 10340, 2017 WL 4005918, at *2 (N.D. Ill.
 17

1 Sept. 12, 2017), opinion amended and superseded, No. 15 C 10340, 2017 WL 5890923 (N.D. Ill.
 2 Nov. 29, 2017) "The court overrules all of Plaintiffs' boilerplate objections because they are and
 3 have long been violative of the Federal Rules of Civil Procedure." *Smash Tech., LLC v. Smash Sols., LLC*, 335 F.R.D. 438, 446 (D. Utah 2020). "Boilerplate or generalized objections are tantamount to
 4 no objection at all and will not be considered...." *Wesley Corp. v. Zoom T.V. Prod., LLC*, No. 17-
 10021, 2018 WL 372700, at *4 (E.D. Mich. Jan. 11, 2018)

5 The putative objections are "boilerplate" with such language as follows:

6 1. " overbroad, harassing, oppressive, vague, ambiguous, seek materials that are
 7 neither relevant to the subject matter of the action nor reasonably calculated to lead to the
 8 discovery of admissible evidence, potentially seek production of materials protected by
 9 the attorney-client privilege, and are invasive of privacy rights protected by the
 10 California Constitution." [(Doc. #90-2, Exhibits "D" and "E", page 1, and lines 6-15]

11 This description is the same boilerplate which the court have held to be unresponsive and no
 12 objection at all: "In other words, "merely assert[ing] boilerplate objections that the discovery
 13 sought is vague, ambiguous, overbroad, unduly burdensome, etc.... without specifying how each
 14 [interrogatory or] request for production is deficient and without articulating the particular harm that
 15 would accrue if [the responding party] were required to respond to [the] discovery requests" simply
 16 is not enough." *Smash Tech., LLC v. Smash Sols., LLC*, 335 F.R.D. 438, 441 (D. Utah 2020).

17 The language of the Objection to the SDT's is " . . . materials that are neither relevant to the
 18 subject matter of the action nor reasonably calculated to lead to the discovery of admissible
 19 evidence, potentially seek production of materials protected." This language is irrelevant given that
 20 the purpose of the SDT (i.e., the records) is to locate property subject to enforcement under Section
 21 695.010 (property subject to enforcement) and Section 699.710 (property subject to execution) and
 22 not engage in discovery in anticipation of a civil trial.

23 BNA is not entitled to "meet and confer," or even comply with Rule 4 of the Civil Standing
 24 Order when BNA's "boilerplate" is deemed to be a waiver.

25 BNA conceded their Objections because "General or boilerplate objections are invalid;
 26 objections to discovery must be made with specificity, and the responding party has the obligation to
 27 explain and support its objections." (*Wesley Corp. v. Zoom T.V. Prod., LLC*, No. 17-10021, 2018
 28 WL 372700, at *4 (E.D. Mich. Jan. 11, 2018)

29 **IV. POST JUDGMENT DISCOVERY IS DIFFERENT FROM AND APART FROM
 30 DISCOVERY DURING THE PENDING OF AN ACTION AND THEREFORE RULE 4
 31 IS MOOT AND INAPPLICABLE**

32 **A. POST JUDGMENT DISCOVERY IS SUBJECT TO FRCP 69(a)(1) &(2)**

1 The discovery, i.e., Subpoena's ("SDT") has been issued under FRCP 62(a)(2) to locate
 2 assets of any to enforce this judgment. Discovery under Rule 69(a)(1)&(2) are different than pre-
 3 trial discovery as follows:

4 Under federal law, the scope of postjudgment discovery is very broad. "Debtor examinations
 5 are intended 'to allow the judgment creditor a wide scope of inquiry concerning property and
 6 business affairs of the judgment debtor,' and 'to leave no stone unturned in the search for assets
 7 which might be used to satisfy the judgment.' " *Salameh v. Tarsadia Hotel*, 2016 WL 29618, *2
 8 (S.D. Cal. Jan. 4, 2016) (citing *United States v Felman*, 324 F. Supp. 2d 1112, 1116 (C.D. Cal.
 9 2004)). Thus, "the judgment creditor must be given the freedom to make a broad inquiry to discover
 10 hidden or concealed assets of the judgment debtor." *Caisson Corp. v. County West Building Corp.*,
 11 62 F.R.D. 331, 334 (E.D. Pa. 1974). Even though Rule 69 discovery may resemble the proverbial
 12 fishing expedition, "a judgment creditor is entitled to fish for assets of the judgment debtor." *Ryan
 13 Inv. Corp. v. Pedregal de Cabo San Lucas*, 2009 WL 5114077, *4 (N.D. Cal. Dec. 19, 2009)
 14 (emphasis in original). See also *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2254
 15 (2014) ("The rules governing discovery in postjudgment execution proceedings are quite
 16 permissive.")" *Textron Fin. Corp. v. Gallegos*, 2016 WL 4077505, at *3 (S.D. Cal. Aug. 1, 2016).
 17 *Iroquois Master Fund, Ltd. v. Glob. ePoint, Inc.*, No. CV 08-7761 UA (SSX), 2018 WL 6929337, at
 18 *3–4 (C.D. Cal. Jan. 9, 2018)

19 Everything else follows in this Motion, but nonetheless, the outcome of this Motion is to
 20 overrule the objections and compel *Byton North America Corporation* ("BNA") to produce the
 21 books, letters, papers, and files as sought in series of Rule 45 Subpoenas which would reveal (or
 22 lead) property subject to the \$30mil judgment due *EDAG Engineering GmbH* ("EDAG"), or stated
 23 otherwise:

24 "...a judgment creditor is entitled to fish for assets..."

25 **B. RULE 4 DOES NOT APPLY TO POST JUDGMENT DISCOVERY AND
 26 PARTICULARLY WHEN BNA WILL NOT AND REFUSED TO PRODUCE ANY
 27 RECORDS.**

28 BNA has not demonstrated that Rule 4 of the Court's Civil Standing applies in the
 29 enforcement of a judgment under Rule 69(a)(2) and specifically the necessity to resolve, one way, a
 30 putative dispute in the production of documents in the collection of a judgment. Rule 4 is the
 31 following

32 "These Standing Orders apply only to cases in which discovery is supervised by this Court
 33 rather than the magistrate judge. The Court, at its discretion, may elect to transfer discovery matters to a
 34 magistrate judge or a special master.:"

35 This case is no longer active, but only an enforcement where the parties, i.e., Plaintiff and
 36 Defendant are no longer engaged in discovery pending a trial. Here the "trial," (i.e. confirmation) is
 37

1 completed. While an SDT locates assets, upon which the Creditor can enforce, Rule 4 addresses
 2 "discovery disputes," based upon a pending action. In this case, the case is "closed."
 3

4 EDAG is entitled to unfettered rights to demand the production of records under Rule
 5 69(a)(2).

6 **V. BNA ADMITTED THAT BNA WILL NOT PRODUCE ANY RECORDS,**
 7 **RENDERING RULE 4 OF THE CIVIL STANDING ORDER ON DISCOVERY MOOT**

8 **BNA** seeks to compel EDAG to engage in the Rule 4 requirement to meet and confer when
 9 BNA cannot and will not produce any records before Judge Hixon as follows:

10 5." Your Honor, if I could just
 11 6 interject on the records. **And again, I'm in a little bit of a**
 12 **7 quandary here because there's nobody at the company who can --**
 13 **8 I can really communicate regarding the records.** Again, and I
 14 9 have no desire to withhold anything from Mr. Cook, **but I'm not**
 15 **10 sure where the records are or how I access them, and there's**
 16 **11 nobody who -- right now who can really tell me.** And if Mr.
 17 12 Cook wants the records before the deposition, then **I think we**
 18 **13 need to keep that in mind in scheduling Mr. Kameswaran's**
 19 **14 deposition. I mean, I will try to get records to Mr. Cook,**
 20 **15 but I need to figure out where they are and how I access them**
 21 **16 and so forth.** So that's another kind of a related problem I
 22 17 have.

23 Forcing EDAG to engage in a "run around" process to obtain records when BNA has no records
 24 to produce.

25 **VI. THE JACKPOT**

26 Silicon Valley Bank provided banking records of BNA, which includes bank statements
 27 including wire transfers which includes the following on the attached schedule, marked **Exhibit "A"**
 28 to the Cook Declaration including transfers to the following:

29 December 21, 2018 FMC Cayman \$26,000,000.00

30 January 18, 2019 FMC Cayman \$117,000,000.00

31 Mr. Ying states as follows:

32 "I am a resident and citizen of the People's Republic of China, and am the Chairman of the
 33 Board of Directors of FMC Cayman. I am responsible for the management of the operations of
 34 FMC Cayman. FMC Cayman owns 100% of the share of Byton Limited (Hong Kong). Byton

1 Limited own 100% of the shares of Byton North America Corporation. (Byton NA). As Chairman
 2 of the Board of Directors of FMC, I have acquired personal knowledge of the history, structure and
 3 operations of Byton Limited and BYTON NA, based on my review of corporation documents and
 records as well las discussions and other individuals with personal knowledge." (Doc. #85-1, Page 1,
 Paragraph 1, page 3 to 11)

4 Mr. Ying and FMC Cayman came into \$143,000,000 in 28 days. In response, BNA states
 5 they are unable to find any records:

6 And again, I'm in a little bit of a
 7 quandary here because there's nobody at the company who can --
 8 I can really communicate regarding the records." (Transcript, Page 9, lines
 9 6-8)

10 Demanding that EDAG is obligated comply with Rule 4 is both moot and fails to address the fact
 11 that Mr. Ying, running FMC Cayman, came into \$143mil but does not offer a scrap of paper, when
 12 no such papers exist based on BNA's statements.

13 **VII. CONCLUSION**

14 To the extent of a requirement of a joint letter, BNA repudiated, forfeited, and waived any
 15 requirement when BNA refused to "meet and confer". If BNA wanted a joint letter, BNA could have
 16 offered, written, or drafted a joint letter. Nothing stopped BNA from writing the joint letter.

17 Nonetheless, BNA has stated in front of a Federal Judge that there are no records to be
 18 produced at this time and potentially no records to be produced ever.

19 However, the unbelievable conclusion is that FMC Cayman came into \$143,000,000.00, and
 20 as it appears, no a scratch of paper has been offered to explain this. Needless to say, no records have
 21 been offered to justify any of these statements in the Ying Declaration.

22 To the extent of any requirement of a joint letter, EDAG requests that the Court excuse this
 23 requirement on the basis of multiple attempts to "meet and confer" which has been ignored. And
 24 moreover, the fact that BNA has no intention of producing any records anyway.

25 Date: January 20, 2022

Respectfully submitted,

26 COOK COLLECTION ATTORNEYS PLC

27 By: /s/ David J. Cook

28 David J. Cook, Esq.
 Attorneys for Petitioner EDAG
 ENGINEERING GMBH